

MEMORANDUM

MAY 17, 1979

TO: BOSTON REDEVELOPMENT AUTHORITY
FROM: ROBERT J. RYAN, DIRECTOR
SUBJECT: ACCEPTANCE OF TITLE FROM GSA
CONFIRMATORY ORDER OF TAKING, BUY PARCEL
FROMISSORY NOTE
CHARLESTOWN URBAN RENEWAL AREA R-55
BOSTON NAVAL SHIPYARD AT CHARLESTOWN

On March 23, 1978, the Authority voted to finally designate Immobiliare New England, now known as Building 42 Associates (for Phases I and IA) as Redeveloper of Disposition Parcel 2A and 2C in the Boston Naval Shipyard at Charlestown.

In order to perfect the title to the Buy Parcel, which the Authority will purchase from GSA, the Redeveloper has requested that the Authority adopt a Confirmatory Order of Taking on the portions of the Buy Parcel that we will be transferring to them next week. The Confirmatory Order of Taking is merely for title perfection purposes and does not involve any cost to the Authority.

This Confirmatory Order of Taking will occur just after the Authority takes title to the parcel from GSA and prior to the transfer of Phases I and IA to Building 42 Associates. The transfer involves the Authority signing a Promissory Note in the amount of \$1,740,000 to raise the capital for the Buy Parcel purchase from GSA. The Promissory Note and mortgage will be substantially in the form attached hereto.

Therefore it is recommended that the Authority adopt the Votes below.

VOTED: That the Authority hereby authorizes the Director to accept title to the Buy Parcel in the Boston Naval Shipyard at Charlestown from GSA.

VOTED: That the Authority hereby authorizes the Director to sign a Promissory Note in the amount of \$1,740,000 to raise capital for the purchase of the Buy Parcel from GSA, payable to Immobiliare New England and secured by a first mortgage on the Buy Parcel.

VOTED: That the Authority adopt a Confirmatory Order of Taking of the Buy Parcel containing Building 42 in the Boston Naval Shipyard at Charlestown, in the Charlestown Urban Renewal Area R-55.

PROMISSORY NOTE

740,000.00

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FOR VALUE RECEIVED, BOSTON REDEVELOPMENT AUTHORITY, a public body corporate and politic (the "Authority" or the "Maker") promises to pay to IMMOBILIARE NEW ENGLAND, a Massachusetts joint venture ("Payee"), or order, at its principal office in Boston, Massachusetts the principal sum of ONE MILLION SEVEN HUNDRED FORTY THOUSAND DOLLARS (\$1,740,000) with interest thereon at the rate per year which equals the prime rate of interest for unsecured loans made by Chase Manhattan Bank, N.A. from time to time plus an additional two per cent (2%). In any event, the entire balance of principal and interest shall be paid on September 15, 1984.

All payments shall be applied first to interest and the balance to principal except that, in the event of a default hereunder, any payment may, at the option of the holder, be applied first to principal.

All such payments of principal and interest shall be made in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts unless the Payee shall accept as payment in whole or in part certain real property to be conveyed to it pursuant to the Immobiliare Agreement, all as more specifically described and defined hereinbelow.

In the event that any payment of interest or principal is not paid when due, at the option of the holder, such payment, during such time as it remains overdue, shall bear interest at the rate of one and one-half per cent (1-1/2%) per month. In the event that any such payment is fifteen (15) days overdue, at the option of the holder, the entire balance of principal and interest may be declared immediately due and payable.

In the event, and only to the extent, that the Payee notifies the Authority in writing that it will accept, in payment of such portion of the principal amount hereof as may be designated in such notice by the Payee, conveyance of good and clear record and marketable title to certain real property in Boston (Charlestown) Massachusetts more particularly described in the Immobiliare Agreement, then that portion of the principal amount hereof so designated in writing by the Payee, and all interest which shall have accrued with respect to such portion, shall be deemed paid in cash by the Authority at and as of the date when the deed conveying such good and clear record and

marketable title is delivered to Immobiliare or its successor or assign in accordance with the Immobiliare Agreement.

In case an event of default by the Authority or an election by Immobiliare to terminate the Immobiliare Agreement as herein-after defined shall occur or be made, as defined in the Trust Indenture, the unpaid principal balance of this bond together with accrued interest thereon may be declared by Immobiliare due and payable on or after a date six (6) months subsequent to the date of such default or election to terminate.

An amount equal to Two Hundred Thousand Dollars (\$200,000) may be prepaid hereunder at the election of the Authority prior to the maturity hereof for the partial release of Parcel 7 as described in the Agreement between Immobiliare New England and the Authority dated _____ (the "Immobiliare Agreement") and as further set forth in the mortgage securing this Note.

The Authority is a public body politic and corporate under Chapter 121B of the General Laws of the Commonwealth of Massachusetts (the "Enabling Act") and this Note is authorized to be issued pursuant to a resolution adopted by the Authority on April 13, 1978 (the "Resolution") for purposes for which Notes are authorized to be issued under the provisions of the Enabling Act. This Note is a general obligation of the Authority and is secured by a mortgage of even date herewith on the premises known as the "Buy Parcel" - Charlestown Navy Yard.

It is hereby certified that all conditions, actions and things required by the Constitution and laws of the Commonwealth of Massachusetts to exist, be performed and happen precedent to or in issuance of this Note do exist, have been performed and have happened in due and legal form.

In Witness Whereof, the Boston Redevelopment Authority has caused this Note to bear the manual signature of its Chairman and its official seal to be affixed hereon, duly attested by the manual signature of its Secretary, all as of the _____ day of _____, 1978.

This note shall have the effect of an instrument under seal.

BOSTON REDEVELOPMENT AUTHORITY

By _____
Chairman

(SEAL)

Attest:

MORTGAGE

BOSTON REDEVELOPMENT AUTHORITY, a body politic and corporate having its principal offices at City Hall, Boston, Massachusetts ("Mortgagor"), FOR CONSIDERATION PAID, HEREBY GRANTS to IMMOBILIARE NEW ENGLAND, a Massachusetts joint venture with its principal place of business at 73 Tremont Street, Boston, Massachusetts ("Mortgagee"), with MORTGAGE COVENANTS, to secure the payment of ONE MILLION SEVEN HUNDRED FORTY THOUSAND DOLLARS (\$1,740,000) with interest thereon, as provided in the Mortgagor's note (or series of notes in such amount) of even date (any and all of which are herein singly or collectively referred to as the "Note") to secure the performance of, or payment to the Mortgagee pursuant to, all covenants and agreements herein and in the Note contained, and to secure the payment or performance of all other debts, covenants and agreements of or by the Mortgagor to or for the benefit of the Mortgagee now existing or hereafter accruing while this mortgage is still undischarged of record, the land in Boston (Charlestown), Massachusetts sometimes known as the "Project Parcel" or "Buy Parcel", all as described in Exhibit "A" annexed hereto, which is incorporated herein by this reference, together with any and all improvements now or hereafter situated thereon.

Also, the Mortgagor hereby grants to the Mortgagee a first security interest in all equipment (as defined in the Uniform Commercial Code), appliances, furnishings and fixtures (to the extent not part of the real estate) now or hereafter placed on the above-described premises, or used in connection therewith, and now owned or hereafter acquired by the Mortgagor, and the proceeds therefrom, and agrees to execute on demand of the Mortgagee all instruments necessary to perfect or continue such security interest, and in the event of default hereunder the Mortgagor hereby grants the Mortgagee full power and authority as attorney irrevocable of the Mortgagor to execute, deliver and record and/or file such instruments.

Said land, improvements, equipment, appliances, furnishings and fixtures are hereinafter referred to as the "premises."

The Mortgagor covenants and agrees with the Mortgagee:

(1) to perform all of the covenants and agreements contained in the Note and herein;

(2) to pay when due all taxes, charges for water, sewer and other municipal services, and assessments, whether or not assessed against the Mortgagor, if applicable or related in any way to the premises, or any interest in the premises of the Mortgagor, the Mortgagee, or any other person or organization, or the debt, obligations or performance secured hereby, or the disbursement or application of the proceeds therefrom, excluding, however, any income or corporation excise tax of the Mortgagee; the Mortgagor grants the Mortgagee in the event of a default hereunder full power and authority as attorney irrevocable of the Mortgagor to apply for and prosecute claims for the abatement of real estate taxes and to collect and endorse any checks issued on account of the Mortgagor in connection with such

claims and to retain and apply the same to the debt secured hereby;

(3) to keep the premises insured against fire vandalism, malicious mischief and such other casualties and contingencies as the Mortgagor from time to time reasonably may require, in such amounts and for such periods which the Mortgagee from time to time reasonably may require; to deposit all insurance policies or memoranda thereof with the Mortgagee forthwith after the binding of such insurance, and to deliver to the Mortgagee new policies or memoranda thereof for any insurance about to expire at least ten (10) days before such expiration, all such insurance policies shall be first payable in case of loss to the Mortgagee and shall be written by such companies, on such terms, in such form and for such periods and amounts as the Mortgagee from time to time reasonably shall designate or approve, and the Mortgagor hereby grants the Mortgagee in the event of a default hereunder full power and authority as attorney irrevocable of the Mortgagor to cancel or transfer such insurance, to collect and endorse any checks issued in the name of the Mortgagor under such policies and to retain any premium or proceeds and to apply the same to the debt secured hereby;

(4) to put, maintain and keep the premises at all times in as good repair and condition as the same now are or hereafter may be put, damage from casualty expressly not excepted, permitting and suffering no waste or strip of the premises to occur, nor any violation of any law, by-law, ordinance, restriction, regulation, order, or code affecting the premises or the use thereof; and not to remove or alter any of the improvements, equipment, appliances, furnishings and fixtures constituting part of the premises other than those set forth on Exhibit "B" hereto without the prior written consent of the Mortgagee;

(5) to observe and perform all the obligations imposed upon the Mortgagor under any leases of the premises, nor to execute without Mortgagee's permission any leases on the premises other than for tenancies from month to month for uses which are aesthetically compatible with Mortgagee's use of adjacent land for apartments, condominiums, and related recreational purposes;

(6) that if the premises or any part thereof shall be damaged or destroyed by fire or other hazard insured against or if the premises or any portion thereof shall be taken by eminent domain, no settlement on account of any loss or damage shall be made without the consent of the Mortgagee, or, in the event of a default hereunder, the Mortgagee may, at its option settle any claims with the insurers or taking authority, and any proceeds from insurance or damages for such taking, as the case may be, shall be paid to the Mortgagee, and the Mortgagor hereby irrevocably assigns the same to the Mortgagee and the Mortgagor hereby grants to the Mortgagee full power and authority as attorney irrevocable of the Mortgagor to settle such claims and to collect and endorse any checks issued in the name of the Mortgagor. The Mortgagee at its discretion may either apply such proceeds against the debt secured hereby (in which case Mortgagor's obligations hereunder to restore such damage to

the premises as may have been caused by such fire, other hazard or taking, shall terminate), or release such portion of the proceeds to the Mortgagor as is necessary to restore the premises to their prior condition insofar as is practicable upon such terms and conditions as the Mortgagee deems appropriate, and apply the balance thereof, if any, to the debt secured hereby; provided, however, that if any insurer of the premises denies liability, Mortgagor shall not be relieved of its obligation to restore the premises;

(7) if the Mortgagor shall default in the performance or observance of any covenant or agreement herein or in the Note contained, the Mortgagee may apply toward the debt secured hereby any deposit payment or any sum due from the Mortgagee to the Mortgagor without first enforcing any other rights of the Mortgagee against the Mortgagor, or against any endorser or guarantor of the Note or against the premises;

(8) if Mortgagee shall become involved in any action or course of conduct with respect to the Note, this mortgage, the premises, or other security for the debt secured hereby, in order to protect its interest therein, including without limitation: the Mortgagee's commencement and prosecution of foreclosure proceedings, involvement in bankruptcy proceedings concerning the Mortgagor, entering the premises, care and management thereof or defending or participating as a party in any action at law or in equity brought by the Mortgagor or any other person or organization with respect to the premises (or other security for the debt secured hereby), the Mortgagor shall reimburse the Mortgagee for all charges, costs and expenses incurred by the Mortgagee in connection therewith, including without limitation attorneys' fees and an additional reasonable fee to compensate the Mortgagee for overhead and personnel salaries and wages attributable to undertaking such actions or conduct;

(9) that at any foreclosure sale of the premises, the premises and any combination or all of the other security for the debt secured hereby may be offered for sale for one total price, and the proceeds of such sale may be accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling. The Mortgagee may, in the exercise of the power of sale herein given, sell the premises and said other security in parts or parcels, said sales may be held from time to time, and the power shall not be fully executed until all of the premises and said other security not previously sold shall have been sold; if surplus proceeds are realized from a foreclosure sale, the Mortgagee shall not be liable for any interest thereon pending distribution of such proceeds by the Mortgagee;

(10) to notify the Mortgagee promptly of the existence of and the exact details of any other security interest in the premises, now existing or hereafter arising, to make all payments that become due to any secured party having such security interests, and at the request of the Mortgagee to discharge immediately any such security interest or to assign to the Mortgagee all of its right, title and interest in and to any and all agreements evidencing such security

(14) any notice, demand or other communication required or permitted hereunder shall be deemed satisfactorily given upon depositing the same in writing in the United States mail by postage prepaid, registered or certified mail, addressed to the party to which it is directed at the address set forth herein.

In the event of a breach of any covenant, condition or agreement contained in this Mortgage remaining uncured for a period in excess of thirty (30) days after notice from the Mortgagee to the Mortgagor (except that no grace period shall be permitted for a default under Section 13(c) above) or any breach in the covenants, conditions or agreements in any instrument given in connection with the Note and debt secured hereby or in any other mortgage, debt or obligation of or from the Mortgagor to the Mortgagee remaining uncured after the expiration of any applicable grace periods, or if any involuntary proceedings shall be commenced against Mortgagor under any chapter of the Federal Bankruptcy Act or other law relating to bankruptcy, bankruptcy reorganization, insolvency or relief of debtors, and such petition or proceeding is not dismissed with sixty (60) days from the date on which it is filed or instituted, the entire debt secured hereby, together with all prepayment charges to which Mortgagee would be entitled under the Note or by law if the Note were prepaid in full at the end of said sixty-day period, shall be due and payable at the option of the Mortgagee, and the Mortgagee shall have the STATUTORY POWER OF SALE as hereinafter provided.

In case any provision of the Note, this Mortgage, or any instrument executed by any person or organization in connection therewith shall be found unenforceable or invalid for any reason, the enforcement of any other provision shall be deemed modified to the extent necessary to be enforceable or if such modification is not practicable, shall be deleted from this Mortgage.

Mortgagee will give a partial release from as described in Exhibit A the lien of this Mortgage in the event of conveyance of parcel 7 to a bona fide purchaser for fair market value pursuant to an agreement whereby such purchaser will develop such parcel for uses aesthetically compatible with Mortgagee's development of the adjacent land for apartments, condominiums, related recreational uses and, if subsequently agreed by Mortgagor and Mortgagee, a hotel on the land immediately adjacent to said parcel 7. The payment of principal necessary for such partial release shall be the greater of (a) \$200,000 or (b) the fair market value of such parcel at the time for purchase thereof by an arm's length purchaser.

This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of the Mortgagor in the Note, this Mortgage, all other instruments executed in connection therewith and in all other mortgages, debts and obligations of or from the Mortgagor to the Mortgagee shall be kept and fully performed, and upon any breach of the same Mortgagee shall have the STATUTORY POWER OF SALE and any other powers given by statute.

The word "Mortgagor" as used herein means Mortgagor named herein, whether one or several, and also means any subsequent owner or owners of the equity of redemption of the premises,

shall be binding upon Mortgagor, its heirs, executors, administrators, successors and assigns and shall be joint and several if more than one person constitute Mortgagor. The word "Mortgagee" as used herein means Mortgagee named herein and any subsequent holder or holders of this Mortgage.

This Mortgage is executed under seal this _____ day of
, 1978.

BOSTON REDEVELOPMENT AUTHORITY

By _____
its
hereto duly authorized

(attached Resolution authorizing execution by signatory)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. , 1978

Then personally appeared the above-named
and acknowledged the foregoing instrument to be the free act and
deed of said Boston Redevelopment Authority.

Before me,

Notary Public

My commission expires: _____

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.

BOSTON REDEVELOPMENT AUTHORITY

ORDER OF TAKING

WHEREAS, the Boston Redevelopment Authority, in accordance with G.L. c. 121B and its predecessor statute G.L. c. 121, adopted and filed in the Suffolk County Registry of Deeds, Book 8069, page 113, an ORDER OF TAKING, dated September 15, 1966, concerning and describing the CHARLESTOWN URBAN RENEWAL AREA, all of the findings, determinations and descriptions set forth therein being incorporated herein by reference and made a part hereof; and

WHEREAS, the Boston Redevelopment Authority has deposited with the Mayor of the City of Boston security to his satisfaction for the payment of such damages as may be awarded in accordance with law to the owner or owners of said area, as required by G.L. c. 79, §40.

NOW, THEREFORE, BE IT ORDERED that the Boston Redevelopment Authority, acting under the provisions of said c. 121B and all other authority thereunto enabling and pursuant to the applicable provisions of said c. 79, and of any and every power and authority to it, granted or implied, hereby takes for itself in fee simple by eminent domain, for the purposes hereinbefore set forth or referred to, the area or areas located in the City of Boston as hereinafter described in ANNEX A, together with any and all easements and rights appurtenant thereto, including any trees, buildings and other structures standing upon or affixed thereto, and including the fee, if any, in all public streets, highways and public ways in said area or areas or contiguous and adjacent to the property taken hereby, provided such fee is a part of said property, except any and all easements of travel in and to

any and all public streets, highways and public ways in said area or areas or contiguous and adjacent thereto.

AND FURTHER ORDERED that in accordance with the provisions of the said c. 79, as amended, awards are made by the Boston Redevelopment Authority for damages sustained by the owner or owners and all other persons, including all mortgagees of record, having any and all interest in each parcel described in ANNEX A and entitled to any damages by reason of the taking hereby made. The Boston Redevelopment Authority reserves the right to amend the award at any time prior to the payment thereof by reason of a change in ownership or value of said property before the right to damages therefor has become vested or for other good cause shown. The awards hereby made are set forth in ANNEX B, which ANNEX B is not to be recorded in the Registry of Deeds with the Order of Taking.

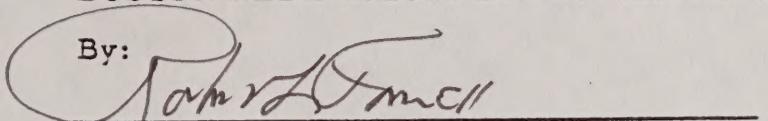
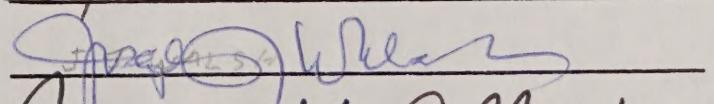
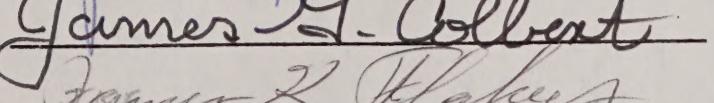
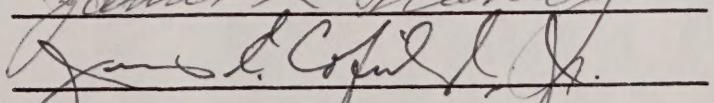
AND FURTHER ORDERED that the Secretary of the Boston Redevelopment Authority cause this instrument of Taking to be recorded in the office of the Suffolk County Registry of Deeds.

IN WITNESS WHEREOF, we, the following members of the Boston Redevelopment Authority have caused the corporate seal of the Authority to be hereto affixed and these presents to be signed in the name and behalf of the Boston Redevelopment Authority.

DATED: MAY 17 1979

BOSTON REDEVELOPMENT AUTHORITY

By:


APPROVED AS TO FORM:

Harold J. Carroll, Chief General Counsel

ANNEX A

BOSTON REDEVELOPMENT AUTHORITY

CHARLESTOWN URBAN RENEWAL AREA

TAKING AREA DESCRIPTION

The following parcels of land are to be taken by this
Order of Taking:

Two certain parcels of land with all improvements thereon situated on the Southeasterly side of Chelsea Street, Charlestown Section of Boston, Suffolk County, Massachusetts, and being shown as Parcels Nos. 1 and 2 on a plan entitled, "Boston Redevelopment Authority, City of Boston, Suffolk County, Massachusetts, Boston Naval Shipyard, Charlestown, Land Parcel Plan Alternate 1 Revised," by Parsons, Brinckerhoff, Quade & Douglas, Inc., dated May 31, 1978, recorded in the Suffolk County Registry of Deeds herewith, said parcels together being more fully bounded and described as follows:

Beginning at a point at the intersection of Parcels 1 and 2 on said plan at Little Mystic Channel, as shown on said plan, which point is Southeasterly 27.52 feet, S49°-22'-02"E, 461.40 feet, N40°-36'-44"E, 470.48 feet and N28°-11'-15"E, 269.62 feet, more or less, from United States Coast & Geodetic Survey Disk 11N, as shown on said plan;

thence running S78°-26'-43"E, 247.32 feet, more or less, to a point;

thence running N80°-45'-51"E, 89.14 feet to a point;

thence running S46°-40'-00"E, 58.49 feet to a point;

thence running S78°-26'-43"E, 159.35 feet to a point;

thence running S19°-36'-44"E, 290.00 feet to a point;

thence running S08°-40'-47"E, 683.54 feet to a point;

thence running S06°-27'-38"W, 628.54 feet to a point;

thence running S24°-49'-42"W, 1,220.27 feet to a point;

thence running S49°-23'-23"W, 221.09 feet, more or less, to a point at Parcel 3 as shown on said plan, the last nine (9) courses being in part by Little Mystic Channel and in part by Main Channel, Boston Inner Harbor, both as shown on said plan;

thence running N40°-37'-24"W, 664.55 feet, more or less, to a point;

thence running S50°-02'-12"W, 42.89 feet to a point;

thence running N40°-37'-56"W, 301.19 feet to a point;

thence running N49°-19'-09"E, 330.34 feet to a point;

thence running N40°-37'-53"W, 504.58 feet to a point;

thence running S49°-22'-12"W, 432.40 feet to a point;

thence running N40°-41'-18"E, 171.57 feet to a point at the parcel labelled "U.S.S. Constitution National Park" on said plan, the last seven (7) courses being by Parcel 3 as shown on said plan;

thence running N40°-41'-18"W, 187.77 feet to a point;

thence running S49°-18'-42"W, 116.36 feet by a "CURB," as shown on said plan, to a point;

thence running N40°-45'-38"W, 100.00 feet to a point;

thence running N73°-31'-33"W, 57.94 feet to a point;

thence running N52°-04'-35"W, 58.87 feet, more or less, to Chelsea Street, as shown on said plan, the last five (5) courses being by "U.S.S. Constitution National Park," as shown on said plan;

thence running N37°-42'-37"E, 1,130.66 feet, more or less, to a point;

thence running N35°-35'-51"E, 236.34 feet to a point;

thence running N35°-34'-57"E, 208.17 feet to a point;

thence running N35°-35'-28"E, 27.35 feet to a point;

thence running N35°-30'-36"E, 392.32 feet to a point;

thence running N36°-34'-05"E, 21.41 feet to a point at Little Mystic Channel, as shown on said plan, the last six (6) courses being by Chelsea Street, as shown on said plan;

thence N78°-11'-41"E, 71.31 feet to a point;

thence running S78°-26'-43"E, 329.74 feet, more or less, to the point of beginning, the last two (2) courses being by Little Mystic Channel, as shown on said plan.

Or however said Parcels may be otherwise bounded and described. Said parcels together containing 89.43 acres, more or less, according to said plan.

ANNEX B

BOSTON REDEVELOPMENT AUTHORITY
CHARLESTOWN URBAN RENEWAL AREA

AWARD OF DAMAGES

No awards are made with this Order of Taking.